No. 79-73

In the Supreme Court of the United States

OCTOBER TERM, 1979

ADELAIDE SHIPPING LINES, LTD., ET AL., PETITIONERS

v.

SUNKIST GROWERS, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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This brief is filed in response to the Court's invitation of October 9, 1979.

QUESTION PRESENTED

Whether, in admiralty cases involving loss by fire, the unseaworthiness of a vessel can preclude the owner from invoking the immunities from liability for fire established by the Limitation of Shipowner's Liability Act, 46 U.S.C. 182, and the Carriage of Goods by Sea Act, 46 U.S.C. 1304(2)(b).

STATUTES INVOLVED

The Limitation of Shipowner's Liability Act, 46 U.S.C. 181 *et seq.*, provides in pertinent part:

§ 182. *Loss by Fire*

No owner of any vessel shall be liable to answer for or make good to any person any loss or damage,

which may happen to any merchandise whatsoever, which shall be shipped, taken in, or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the design or neglect of such owner.

The Carriage of Goods by Sea Act, 46 U.S.C. 1300 *et seq.*, provides in pertinent part:

§ 1301. *Definitions*

* * * * *

(a) The term "carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper.

* * * * *

§ 1303. *Responsibilities and liabilities of carrier and ship*

(1) *Seaworthiness*

The carrier should be bound, before and at the beginning of the voyage, to exercise due diligence to—

(a) Make the ship seaworthy;

(b) Properly man, equip, and supply the ship;

(c) Make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.

(2) *Cargo*

The carrier shall properly and carefully load, handle, stow, carry, keep, care for, and discharge the goods carried.

* * * * *

§ 1304. *Rights and immunities of carrier and ship*

(1) *Unseaworthiness*

Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried fit and safe for their receiption, carriage, and preservation in accordance with the provisions of paragraph (1) of section 1303 of this title. Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other persons claiming exemption under this section.

(2) *Uncontrollable causes of loss*

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

* * * * *

(b) Fire, unless caused by the actual fault or privity of the carrier;

* * * * *

§ 1308. *Rights and liabilities under other provisions*

The provision of this chapter shall not affect the rights and obligations of the carrier under the provision of * * * section 175, 181 to 183, and 183b to 188 of this title * * * [the Limitation of Shipowner's Liability Act, including 46 U.S.C. 182].

STATEMENT

This suit in admiralty arises from damage by fire to a cargo of lemons owned by respondent Sunkist that was shipped aboard the vessel GLADIOLA for delivery to Gdansk, Poland. The vessel received the lemons in Long Beach, California, and then proceeded to Guyaquil Harbor, Ecuador, with respondent's consent, to load additional cargo. While the GLADIOLA was in Guyaquil Harbor, a fire broke out in the engine room that ultimately rendered the refrigeration system on the vessel inoperative, thus making it impossible to preserve the cargo for delivery to the European buyer. The lemons were accordingly donated to the government of Ecuador, resulting in a loss to respondent of $350,784 (Pet. App. 1-B to 5-B).

The fire was caused by the failure to employ a proper Serto ferrule fitting in the joint of a diesel fuel line connected to the vessel's generator (Pet. App. 14-B). This omission caused a pipe to separate from the generator, resulting in the discharge of flammable oil on the hot surface of the generator (*ibid*; see also *id.* at 3-B). Because of inadequate training in fighting fires and using fire extinguishing equipment, the crew failed to turn off the valves controlling the discharge of diesel oil until the fire had begun and also failed to activate the ship's fire extinguishers in time to halt the blaze (*id.* at 15-B, 3-B to 4-B).

Respondent brought suit in admiralty in the United States District Court for the Northern District of California seeking damages for loss of the cargo. Petitioners Adelaide Shipping Lines, Ltd., the owner of the vessel, and Salen Reefer Services AB, the charterer, claimed exoneration from liability on the basis of the Carriage of Goods by Sea Act, 46 U.S.C. 1304(2)(b), which absolves the owner of liability for "[f]ire, unless caused by the actual fault or privity of the carrier."

Petitioners also relied on the Limitation of Shipowners' Liability Act, 46 U.S.C. 182, which likewise exempts the owner from all liability "unless such fire is caused by the design or neglect of such owner."

The district court held that the petitioners were entitled to exoneration under these statutory provisions. The court concluded that, under these provisions, "the negligence must be on the part of the owner/charterer, or their high-level shoreside employees. The owner or charterer [is] not liable for mere crew negligence" (Pet. App. 12-A). Applying this test, the district court found that, "although a Serto ferrule should have been maintained in a particular joint" (*id.* at 9-A) and that "the crew should have been given specific instructions on the proper way to deal with engine room fires" (*id.* at 10-A), these deficiencies could not be said to be the result of "fault or neglect" of the owners or their managing agents.

The court of appeals reversed, holding that (Pet. App. 17-B to 18-B):

> The design or neglect was that of the managing officers or supervisory employees, not that of the master or crew or subordinate employees. The "design or neglect" being the failure to provide a proper compression or flange joint and to properly man and equip a trained crew prior to the commencement of the voyage.

The court of appeals reached its conclusion in partial reliance on the provisions of the Carriage of Goods by Sea Act that relate to the owner's obligation to provide a seaworthy vessel at the commencement of the voyage. These provisions (46 U.S.C. 1303-1304) require the owner to exercise due diligence in "[p]roperly man[ning] * * * the ship," an obligation that the court concluded was a prerequisite to claiming exoneration under the fire exemption provisions of 46 U.S.C. 182 and 1304(2)(b).

DISCUSSION

In our view, the decision of the court of appeals does not conflict with prior decisions of this Court or other circuits. Further review is not required in these circumstances.

Petitioners contend (Pet. 8-18) that, under the Carriage of Goods by Sea Act, the standards for liability for unseaworthiness are different from those governing an owner's liability for loss by fire and that the court of appeals erroneously applied unseaworthiness standards to impose liability on petitioners for fire damage. Petitioners correctly observe (Pet. 8) that the obligation to render a vessel seaworthy "is non-delegable by a vessel owner and may be breached by any crew member or shoreside worker," while the provisions pertaining to fire loss require "actual fault or privity" of the owner (46 U.S.C. 1304(2)(b)), or "design or neglect" of such owner (46 U.S.C. 182)—standards that have been construed to require actual fault by the owner itself or its high-level employees (see page 8 note 5, *infra*).[1]

However, assuming *arguendo* that the court below improperly applied unseaworthiness standards in the context of fire loss, the court also concluded that in this case there was sufficient proof of owner neglect to render the fire exemption provisions inapplicable. The court explained that, whatever differences might exist between the duty to render a ship seaworthy and the duty of care required by the fire exemption provisions, those differences were "immaterial" in the present case (Pet. App. 17-B). The court held that, in failing to provide a

[1]The two standards have been construed to have the same meaning. See G. Gilmore & C. Black, *The Law of Admiralty* 163, 878 & n.87, 879 (2d ed. 1975).

properly manned crew and proper safety equipment, "the design or neglect was that of managing officers or supervisory employees, not that of the master or crew or subordinate employees" (Pet. App. 17-B to 18-B).[2] Since the court of appeals has found that petitioners would be liable in any event under the standards that they advocate, their dispute over which standards are to govern is without significance, and the only question is a factual one, which does not warrant this Court's review.[3]

Contrary to petitioners' assertion (Pet. 8, 18-19), the decision of the court of appeals does not depart from the principle adopted by other courts that the owner is liable for fire loss only in the event of his own personal dereliction or that of high-level management. The rule articulated by the court below is that "[w]here the unseaworthy conditions that were the cause of the fire damage existed by reason of owner neglect or actual fault, the exemptions created by the Fire Statute and COGSA do not apply" (Pet. App. 19-B quoting from *New York Merchandise Co.* v. *Liberty Shipping Corp.*, 509 F. 2d 1249, 1252 (9th Cir. 1975); emphasis omitted).

[2]As the court observed, "it was *incumbent upon the vessel's owners* to see that the master and the crew were fully trained in the operation and use of fire equipment." Pet. App. 18-B (emphasis in original).

[3]Although the district court was of the view that petitioners were not guilty of neglect or fault (Pet. App. 5-A), the court of appeals concluded that their failure to provide a proper ferrule fitting and to man the ship with a crew trained in fire fighting techniques was a failure to exercise reasonable care. See Pet. App. 14-B to 15-B.

Viewed in this context,[4] there is no basis for the assertion that the court's decision conflicts with the decisions of other circuits or with decisions of this Court.[5]

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[4]There are observations in the opinion of the court of appeals that, if taken out of context, could serve as the basis for novel admiralty doctrine. The court suggests at various points that the requirement of "due diligence" to make the ship seaworthy applies to master and crew as well as the owners and is an "overriding obligation" that must be fulfilled if the fire immunity provisions are to be invoked (see, *e.g.*, Pet. App. 29-B). However, the implications of these views should await further clarification in light of the narrow basis for the court's actual holding. Moreover, the present case does not appear to be an appropriate vehicle for exploring issues of burden of proof in fire loss cases since the underlying facts establishing fault on the part of the owner were either "undisputed" (*id.* at 14-B) or proven by "overwhelming evidence" (*id.* at 15-B). See also *id.* at 8-A to 10-A (district court findings that a Serto ferrule was not utilized and that the crew should have been given instructions on methods to deal with engine room fires).

[5]This Court has held that, in fire loss cases, a ship owner's liability is conditioned on his personal responsibility for the fire or that of his managing officers and agents and that vicarious liability under the general doctrine of unseaworthiness does not apply. *Earle & Stoddart, Inc.* v. *Ellerman's Wilson Line, Ltd.*, 287 U.S. 420 (1932). Accord, *Consumers Import Co.* v. *Kabushiki Kaisha Kawasaki Zosenjo*, 320 U.S. 240 (1943). The lower federal courts are in agreement that actual fault on the part of the owner must be shown as a prerequisite to liability for fire. See, *e.g.*, *Hoskyn & Co.* v. *Silver Line*, 143 F. 2d 462, 463 (2d Cir. 1944) (no liability because neglect of owner not shown as cause of fire); *American Tobacco Co.* v. *The Katingo Hadjipatera*, 194 F. 2d 449 (2d Cir. 1951); *A/S J. LUDWIG MOWINCKELS REDERI* v. *Accinanto, Ltd.*, 199 F. 2d 134, 143-145 (4th Cir. 1952) (unseaworthiness doctrine imposes no liability because fire caused by negligence of stevedores, not by the negligence of the general agent); *Asbestos Corp.*, v. *Compagnie De Navigation*, 480 F. 2d 669, 671-673 (2d Cir. 1973) (liability only if unseaworthy conditions are due to actual fault of owner and are the cause of the fire). Prior decisions of the Ninth Circuit are consistent with this rule. See *Albina Engine & Machine Works* v. *Hershey Chocolate Corp.*, 295 F. 2d 619 (9th Cir. 1961), and *New York Merchandise Co.* v. *Liberty Shipping Corp.*, 509 F. 2d 1249, 1251-1252 (9th Cir. 1975).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 1979